IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 6772 OF 2000

Manohar Dhoneu Gawade ..... Petitioner.

versus

1. Union of India)
Provident Fund Commissioner)
)
2. The Regional Provident)
Fund Commissioner)... Respondents.

.....

Shri S.V. Marne for the petitioner.
Shri Sureshkumar for the Respsondent- Union of India.

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CORAM ; V.G.PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED; 2ND FEBRUARY, 2005.

ORAL JUDGMENT (Per Palshikar, J.)

1. By this petition, the petitioner has challenged the order dated 30th August 2000 passed in Original Application No. 743 of 1999 by Bombay Bench of Central Administrative Tribunal.

2. Original Application No. 743 of 1999 was filed in the Tribunal by the respondent's employee claiming that appointment of certain persons on the basis of their backward class certificates was violating the quota Rule in the matter of backward class and the order of

promotion of these persons exceeded 50 % quota and was therefore liable to be struck down, and as a consequence, a direction was liable to be issued, promoting the petitioner in the vacancy available. The Tribunal took into consideration the factual aspect and came to the conclusion that factually only six appointments have been made by the Union of India and therefore the quota of 50% is not exceeded though the advertisement or notification calling upon the applications may seems to have violated the quota.

3. The contention of the petitioner before the Tribunal as also before this court is that the Supreme Court by its decisions settled the position in law in regard to the reservation of backward class and in no case that reservation should exceed 50% of the total seats available for appointment or promotion. There can be no dispute with this proposition of law. The question which fall for consideration in the instant case is whether by accounting these persons to the resevration of backward class, any violation of 50% quota has occured or not. The Tribunal has held rightly and in our opinion such tendency can arise only when factual promotions or appointments are made and making of that appointment violates the quota. Merely because some more seats were shown belonging to

backward classes, it cannot be said that there is factual violation of the quota. Apart from this it is also obvious that the Government authorities are trying to provide appointment of backward class and also are required to fill in the back log. In such circumstances the error of effecting more seats as available from backward class when factually appointment of those persons in the post cannot be said to be illegal and at the most it can be held as curable and has factually being cured. In our opinion therefore there is no substance in this petition and is therefore liable to be dismissed.

Petition is accordingly dismissed.

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